

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2019120540

PARENT ON BEHALF OF STUDENT,

v.

OXNARD SCHOOL DISTRICT.

DECISION BY SETTLEMENT

(CAL. CODE REGS., TIT. 5, § 3087)

FEBRUARY 27, 2020

Cole Dalton, Administrative Law Judge, Office of Administrative Hearings, State of California, enters this Decision by Settlement pursuant to section 3087 of title 5 of the California Code of Regulations. Administrative Law Judge is referred to as ALJ. Office of Administrative Hearings is referred to as OAH.

On December 13, 2019, OAH received a Request for Due Process from Student. On January 13, 2020, Oxnard filed a response to Student's request with OAH.

ALJ Dalton began the due process hearing in Oxnard, California on February 4, 2020. Attorneys Shawna Parks and Janeen Steel represented Student. Mother attended the hearing. OAH provided a Spanish language interpreter. Attorneys Lawrence Joe and Ana Gallegos represented Oxnard. Oxnard's Interim Director of Special Education Katrina Madden and Manager of Special Education Danielle Edwards attended the hearing.

After the hearing commenced, but before entry of evidence, the parties announced they reached a settlement agreement and requested a stipulated decision based upon the terms of the agreement. The parties requested additional time to finalize the settlement agreement and obtain signatures. ALJ Dalton recessed the hearing for an hour to provide the parties with sufficient time to finalize the agreement.

When the hearing reconvened, the parties presented ALJ Dalton with a fully executed agreement. The agreement encompassed the parties' request for a decision by settlement. ALJ Dalton took the parties' request for decision by settlement under submission and granted the parties' request for continuance to allow them an opportunity to file their agreement with OAH. ALJ Dalton continued the matter to February 10, 2020, for a telephonic status conference.

On February 5, 2020, the parties filed their fully executed agreement with OAH, which OAH considered a request for decision by settlement. On February 10, 2020, ALJ Dalton held a telephonic status conference to discuss the parties' agreement and request for decision by settlement. For reasons stated on the record, the parties sought a short continuance to file a revised agreement. ALJ Dalton continued the matter to

February 12, 2020, at which time the parties filed a revised agreement with OAH. The matter was then submitted for decision by settlement pursuant to the terms of the parties' agreement.

STIPULATED ISSUES

1. Oxnard denied Student a free appropriate public education from August 2017 through December 13, 2019, the date on which he filed his complaint, by:
 - a. Failing to evaluate Student in all areas of suspected disability to determine eligibility for special education and related services, and
 - b. Failing to offer an individualized educational program that was reasonably calculated to enable Student to make progress appropriate in light of his circumstances.

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.)

The parties stipulate that Student is 13-years-old, attending eighth grade at Cesar Chavez School within Oxnard attendance boundaries.

DECISION BY SETTLEMENT

The Individuals with Disabilities in Education Act and related state laws strongly encourage the settlement of special education disputes. (See, e.g., 20 U.S.C. § 1415(f)(1)(B); Ed. Code, § 56501.5, subd. (a) [requirement of resolution session before due process hearing]; 20 U.S.C. § 1415(e); Ed. Code, § 56500.3 [availability of mediation before due process hearing]; 20 U.S.C. § 1415(f)(1)(B)(ii); 34 C.F.R. § 300.510(d)(2)(2006); Cal. Code of Regs., tit. 5, § 4650, subd. (a)(4); *Wyner v. Manhattan Beach Unified School District* (9th Cir. 2000) 223 F.3d 1026, 1028-1030 [administrative enforcement of settlements of due process disputes].)

California administrative law authorizes decision by settlement. (Gov. Code, § 11415.60; *Rich Vision Centers, Inc. v. Board of Medical Examiners* (1983) 144 Cal.App.3d 110, 115-116 [“...we see no limitations on the conditions that may be included in a settlement except that such conditions must not violate public policy.”].) Government Code section 11415.60 does not apply to special education due process disputes. (Cal. Code Regs., tit. 5, § 3089), but the State Board of Education has adopted a similar regulation. Section 3087 of title 5 of the California Code of Regulations provides:

Notwithstanding Government Code section 11415.60 of the Administrative Procedure Act, a decision by settlement may be issued on terms the parties determine are appropriate so long as the agreed-upon terms are not contrary to the law.

AGREED UPON TERMS

The parties stipulate that Student is eligible for special education and related services under the category of specific learning disability and other health-impairment. The parties stipulate that Oxnard is the local education agency responsible for Student's special education services. The parties stipulate that Oxnard should have found Student eligible for special education as of October 2017. The parties stipulated Oxnard would provide compensatory education to Student. The parties' agreed terms have been incorporated into the Order below.

The parties and their attorneys entered into an agreement which is part of the official record.

The stipulated facts in the parties' agreement constitute the written findings of fact in this Decision. (See 20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).). The parties settled their dispute on terms they determined are appropriate. The agreement does not contain any provision that is contrary to law.

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CONCLUSIONS AND PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, the parties agreed that Student prevailed on all issues for which Student sought a hearing. Specifically:

1. Oxnard denied Student a free appropriate public education from August 2017 through December 13, 2019, the date on which he filed the complaint, by:
 - a. Failing to evaluate Student in all areas of suspected disability to determine eligibility for special education and related services, and
 - b. Failing to offer an individualized education program that was reasonably calculated to enable Student to make progress appropriate in light of his circumstances.

ORDER

The parties stipulate that Oxnard shall provide to Student the following compensatory education:

1. Oxnard agrees to directly fund an intensive instructional program for Student for 86 weeks, which is equivalent to more than two academic school years including extended school year, at Merrill Education Center, which located at 5743 Corsa Avenue, Suite 118, Westlake Village, California 91362, (818) 865-0008. Oxnard agrees to fund 16 hours per week of one-to-one instruction by educational therapist(s) at Merrill Education Center for 86 weeks of one-to-one instruction, which is equivalent to a total of

1,376 hours. Student's family agrees to work with Merrill Education Center directly to coordinate a start date for services that can begin any time after April 1, 2020, and will conclude no later than June 15, 2022.

2. Oxnard shall pay Merrill Education Center directly for Student's tuition, lunch, as well as other incidental costs for books and materials for the duration of the program identified in Paragraph 1.
3. Oxnard shall provide Student round-trip transportation to and from Student's home and Merrill Education Center for up to five days per week depending on the program schedule. Oxnard agrees to fund this transportation for the duration of the program identified in Paragraph 1.
4. Student will enroll in the school/district of his choice for the duration of this program. If at any time Merrill Education Center cannot provide the intensive program, Oxnard will meet and confer with attorneys for Student's family to discuss an alternative intensive educational program and the remaining hours designated for these services.
5. If Student's disability circumstances change, including but not limited to, a catastrophic injury or event, the parties will meet and confer within 15 days of said catastrophic injury or event to discuss an alternative program for the duration of the period in program as stated in Paragraph 1.

6. Upon completion of the program identified in Paragraph 1, the parties understand that Oxnard is no longer Student's district of responsibility and that Student's educational program, thereafter, is the responsibility of the school district in which Student is enrolled.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

Cole Dalton

Administrative Law Judge

Office of Administrative Hearings